

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED]
Claimant

Reg. No: 2010-7666
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
January 7, 2010
St. Clair County DHS

ADMINISTRATIVE LAW JUDGE: Janice Spodarek

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9; and MCL 400.37 upon claimant's request for a hearing. After due notice, a telephone hearing was held on January 7, 2010.

ISSUE

Did the Department of Human Services (DHS) properly deny claimant's Medical Assistance (MA-P) and State Disability Assistance (SDA) application?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

- (1) On 10/20/09, claimant applied for MA-P and SDA with the Michigan DHS.
- (2) Claimant did not apply for retro MA.
- (3) On 8/5/09, the MRT denied.
- (4) On 8/18/09, the DHS issued notice.

(5) On 8/26/09, claimant filed a hearing request.

(6) Claimant has not applied for SSI based on disability with the SSA. Claimant currently receives Social Security Retirement from SSA on the basis of age in the amount of \$1,026 per month.

(7) On 12/7/09, the State Hearing Review Team (SHRT) denied claimant.

(8) As of the date of application, claimant was a 63-year-old female standing 5' 2" tall and weighing 112 pounds. Claimant has a 12th grade education.

(9) Claimant reports that she does not have an alcohol/drug abuse problem or history. Claimant testified that she was drinking approximately three to four cans of beer per day when she left her position with her last job in 2008. Claimant testified that she smokes approximately ½ pack of cigarettes per day. Contrary evidence in a July 14, 2009 evaluation indicates smoking “2 packs per day for 47 years.” Exhibit 18. In response, claimant indicated that she smoked that amount on her last job in 2008. Claimant has a nicotine addiction.

(10) Claimant has a driver’s license and can drive a motor vehicle.

(11) Claimant is not currently working. Claimant’s work history is unskilled.

(12) Claimant’s evidentiary packet contains her alleged impairment pursuant to Exhibit 10 as “stress disorder.” Claimant identifies the onset date as 6/08. At the administrative hearing, claimant testified that she is alleging disability on the basis of frostbite and difficulty walking properly due to the frostbite and/or blood pressure issues. Contrary evidence includes the July 14, 2009 medical evaluation where claimant’s chief complaints are listed as: “right shoulder, back, left knee.” Exhibit 18.

(13) The July 14, 2009 evaluation by [REDACTED]

[REDACTED] indicates that claimant’s chief complaints include: “right shoulder, back, left knee.”

The physician notes that claimant denies any issues with the left shoulder “now other than lifting up to her waist.” The physician further states:

In regards to her knees, she states she sustained a slip and fall injury on some wet flooring in October 2008. She now has pain over the left kneecap. Again, she is not undergoing any therapy. The patient has not worked since October 2008.... She stopped working because she ‘had had enough.’ ... Lives by herself and can do her activities of daily living and household chores. She is able to drive, cook, and do yard work.... Denies any problems sitting, standing, or walking. ...

The physician concludes with:

I do not find any significant orthopedic disease today. She did have some crepitus in the left patellar area but her range of motion was well preserved. No difficulty doing orthopedic maneuvers.... Prognosis does appear fair but not deteriorating. Exhibit 15.

(14) A DHS-49B completed 10/20/08, contains no observable difficulties other than “allergies.” Exhibit 9.

(15) A DHS-49, undated, does not have any corroborating laboratory and/or x-ray findings to support any of the statements in the form. Claimant has no mental limitations.

(16) Claimant testified at the administrative hearing that she does not need any assistance with her activities of daily living, and does not need any assistance with her bathroom and grooming needs. Claimant stipulated at the administrative hearing in response to the question as to whether she had any evidence that she could not work: “Not really.”

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

Statutory authority for the SDA program states in part:

- (b) A person with a physical or mental impairment which meets federal SSI disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.

In order to receive MA benefits based upon disability or blindness, claimant must be disabled or blind as defined in Title XVI of the Social Security Act (20 CFR 416.901). DHS, being authorized to make such disability determinations, utilizes the SSI definition of disability when making medical decisions on MA applications. MA-P (disability), also is known as Medicaid, which is a program designated to help public assistance claimants pay their medical expenses. Michigan administers the federal Medicaid program. In assessing eligibility, Michigan utilizes the federal regulations.

Relevant federal guidelines provide in pertinent part:

"Disability" is:

...the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months....
20 CFR 416.905.

The federal regulations require that several considerations be analyzed in sequential order:

...We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that

you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

The regulations require that if disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b). If no, the analysis continues to Step 2.
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.909(c).
3. Does the impairment appear on a special Listing of Impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment that meets the duration requirement? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.920(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. Sections 200.00-204.00(f)?
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? This step considers the residual functional capacity, age, education, and past work experience to see if the client can do other work. If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(g).

At application claimant has the burden of proof pursuant to:

...You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

Federal regulations are very specific regarding the type of medical evidence required by claimant to establish statutory disability. The regulations essentially require laboratory or clinical

medical reports that corroborate claimant's claims or claimant's physicians' statements regarding disability. These regulations state in part:

...Medical reports should include --

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as sure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment.... 20 CFR 416.929(a).

...The medical evidence...must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

Medical findings consist of symptoms, signs, and laboratory findings:

- (a) **Symptoms** are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.
- (b) **Signs** are anatomical, physiological, or psychological abnormalities which can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicate specific psychological abnormalities e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception. They must also be shown by observable facts that can be medically described and evaluated.
- (c) **Laboratory findings** are anatomical, physiological, or psychological phenomena which can be shown by the use of a medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psychological tests. 20 CFR 416.928.

It must allow us to determine --

- (1) The nature and limiting effects of your impairment(s) for any period in question;
- (2) The probable duration of your impairment; and
- (3) Your residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Information from other sources may also help us to understand how your impairment(s) affects your ability to work. 20 CFR 416.913(e).

...You can only be found disabled if you are unable to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death, or which has lasted or can be expected to last for a continuous period of not less than 12 months. See 20 CFR 416.905. Your impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.... 20 CFR 416.927(a)(1).

Applying the sequential analysis herein, claimant is not ineligible at the first step as claimant is not currently working. 20 CFR 416.920(b). The analysis continues.

The second step of the analysis looks at a two-fold assessment of duration and severity. 20 CFR 416.920(c). After careful review of the substantial and credible evidence on the whole record, this Administrative Law Judge concurs with the SHRT decision in finding that claimant has a non-severe impairment.

In reaching this conclusion it is noted that claimant's report of her alleged disabilities is inconsistent throughout the entire record herein. First, claimant indicated on her application that she was alleging disability on the basis of a "stress disorder." However, there was no indication in her evidentiary packet that she is being treated for any stress disorder or, in fact, that it was diagnosed. On the DHS-49 which is undated, the physician notes that claimant has no mental limitations. There is no narrative or handwritten note regarding any stress disorder. Nor did claimant significantly address this at the administrative hearing.

Claimant also alleged disability by way of her testimony at the administrative hearing that she has frostbite in her foot and blood pressure problems. However, neither of these conditions is identified in the evidentiary packet or substantiated with any kind of diagnosis or medical evidence.

In addition, in the July 14, 2009 evaluation by [REDACTED], neither of these complaints is listed on her application and/or in testimony. At the same time, claimant does list complaints which she did not testify to or put on her initial application: “right shoulder, back, left knee.” The evaluation notes that claimant is not undergoing any therapy for any of the listed conditions, and in fact, “... denies any issues with the right shoulder now other than lifting to her waist. ...” The evaluator concludes that there is no finding of any significant orthopedic disease. Claimant did not have any difficulty doing any orthopedic maneuvers. Exhibit 15.

Claimant’s primary concern appears to be her need to have medical in order to purchase her medications. While understandable, such a request does not rise to statutory disability as it is defined under federal and state law.

As noted above, claimant has the burden of proof pursuant to 20 CFR 416.912(c). Federal and state law is quite specific with regards to the type of evidence sufficient to show statutory disability. 20 CFR 416.913. This authority requires sufficient medical evidence to substantiate and corroborate statutory disability as it is defined under federal and state law. 20 CFR 416.913(b), .913(d), and .913(e); BEM 260. These medical findings must be corroborated by medical tests, labs, and other corroborating medical evidence that substantiates disability. 20 CFR 416.927, .928. Moreover, compliance and symptoms of pain must be corroborated pursuant to 20 CFR 416.929(a), .929(c)(4), and .945(e). Claimant’s medical

evidence in this case, taken as a whole, simply does not rise to statutory disability by meeting these federal and state requirements. 20 CFR 416.920; BEM 260, 261.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department's actions were correct.

Accordingly, the department's determination in this matter is UPHELD.

/s/
Janice Spodarek
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: January 25, 2010

Date Mailed: January 26, 2010

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the mailing date of the rehearing decision.

JS/cv

cc:

